

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD IAN ROBINSON,

Defendant-Appellant.

UNPUBLISHED
February 28, 2012

No. 302274
Washtenaw Circuit Court
LC No. 10-000527-FC

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of conspiracy to commit armed robbery, MCL 750.157a, MCL 750.529, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.277b, felon in possession of a firearm, 750.224f, and possession of burglar's tools, MCL 750.116. We affirm.

Defendant first argues that the trial court erred when it denied his trial attorney's motion to withdraw. We disagree. A trial court's denial of a motion to withdraw as counsel is reviewed for an abuse of discretion. *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999). An abuse of discretion occurs when the decision is outside the range of reasonable and principled outcomes. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

When reviewing a trial court's decision to deny a defense attorney's motion to withdraw, this Court considers the following factors:

(1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*Echavarria*, 233 Mich App at 369.]

At the September 8, 2010 hearing on defense counsel's motion to withdraw, defendant indicated his desire to have another attorney appointed to represent him because he did not trust his current attorney. Additionally, defendant's attorney indicated that there had been a breakdown in communications with defendant.

At the motion hearing, defense counsel stated that the breakdown in communication impacted issues of trial strategy. But counsel left it to defendant to elaborate. When the trial court asked defendant what the issues were, defendant indicated (without explicitly stating) that there was a disagreement regarding whether he should testify. Defendant, however, never stated that his attorney refused to let him exercise his right to testify, nor did defendant affirmatively state his desire to testify. Rather, defendant merely stated that it was his understanding that at a trial, both choosing to testify and not choosing to testify could negatively impact his case. Apparently, this information led defendant to believe he had to take a deal, which was at odds with his desire to have a trial.

Contrary to defendant's argument, this does not show a "bona fide irreconcilable dispute" with his attorney. See *People v Hernandez*, 84 Mich App 1, 9; 269 NW2d 322 (1978). Defendant did not state that counsel was pushing him to plead when he wanted to go to trial. Rather, it appears that counsel was merely explaining the risks associated with the decision on whether to testify, which provided defendant with information important to making an intelligent choice on the matter. This is exactly what a party's attorney should do. See MRPC 1.4(b). That the uncertainty this raised for defendant resulted in him feeling that his safest option was to agree to plead speaks to the realities of these considerations, not an irrevocable breakdown in the client-attorney relationship. Defendant may have felt more comfortable with an attorney that did not thoroughly explain his choices and their associated risks, but that does not entitle him to appointment of new counsel.

Defendant asserts that the trial court interrupted him before he was able to articulate his specific disagreements with his trial attorney. The court did initially interrupt defendant, but did so out of concern that defendant might disclose privileged information. The trial court then explained the standard it must be guided by when deciding a motion to withdraw:

[T]here has to be some demonstration to the Court that to fit within the context of good cause, that a fundamental trial tactic or issue is causing such a disagreement that would lead the Court to believe that, for some reason, either you're not being adequately represented or there's just absolutely no possibility because there's been such a complete breakdown between you and your attorney.

Defendant responded and stated "I fully understand, sir. It's just along the lines of trust, you know. I mean how can I have a person represent me if I can't trust 'em, you know?" Therefore, although defendant was initially interrupted, he was given an opportunity to articulate his specific disagreements to the trial court.

In sum, although it appears that defendant and his appointed counsel were not communicating effectively at the time of the hearing, there was no "bona fide irreconcilable

dispute.” See *Hernandez*, 84 Mich App at 9. Thus, the trial court properly denied the motion.¹

Next, defendant argues that he was denied his right to a fair trial because the trial court excluded evidence of his codefendant’s two 2009 juvenile adjudications for receiving and concealing stolen property. Defendant argued the prior adjudications were admissible to impeach his codefendant’s credibility. The trial court excluded the evidence. Defendant argues this was error and that it denied him the right to present a complete defense.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). “An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside this principled range of outcomes.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). We review de novo whether a defendant was denied his constitutional right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

MRE 609(e) addresses the use of prior juvenile adjudications to attack the credibility of a witness, providing as follows:

Evidence of juvenile adjudications is generally not admissible under this rule, except in subsequent cases against the same child in the juvenile division of a probate court. The court may, however, in a criminal case or a juvenile proceeding against the child allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission is necessary for a fair determination of the case or proceeding.

Defendant argues that the evidence was both admissible in an adult proceeding and necessary for a fair determination of his case. This argument is unpersuasive. Even if it is assumed that his codefendant’s prior juvenile adjudications would have been admissible in an adult proceeding, MRE 609, there is no indication that admission was necessary for a fair determination of the case. Defendant asserts that his codefendant’s credibility was the determining factor behind his conviction. The trial court, however, correctly determined that the prior adjudications would have little probative value on the issue of his credibility. That is, his codefendant’s credibility was put at issue the moment he walked into the court room wearing a jumpsuit and shackles. And on cross-examination, he admitted he was presently in custody. Defense counsel also questioned him regarding all the details of his plea agreement. The prior

¹ Additionally, defendant has failed to “demonstrate[e] prejudice resulting from the trial court’s” denial of the motion to withdraw. See *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976). Defendant alleges that he was denied effective assistance of counsel, but does not articulate how he was denied effective assistance of counsel. Defendant does not argue that the disagreements caused his appointed attorney to render deficient representation, nor does he argue that the dispute affected the fairness or integrity of the proceedings. Defendant’s mere allegation of ineffective assistance, without more, is insufficient to show any resulting prejudice.

adjudications would have added little for the jury to consider when weighing his credibility. Therefore, admission of the juvenile adjudications was not necessary for a fair determination of the case and the trial court did not abuse its discretion when it excluded them.

Defendant also argues that the exclusion of his codefendant's prior juvenile adjudications denied him his right to present a complete defense. In support, defendant cites *Davis v Alaska*, 415 US 308; 94 S Ct 1105; 39 L Ed 2d 347 (1974). In *Davis*, the Supreme Court held that the petitioner had been denied his right to effective cross-examination because the trial court excluded evidence of a key witness' juvenile record. *Id.* at 318-319. The petitioner did not want the evidence used to impeach the witness' "character as a truthful person, but . . . to show specifically that at the same time [the witness] was assisting the police in identifying petitioner he was on probation for burglary." *Id.* at 311. The Supreme Court stated that "[w]hile counsel was permitted to ask [the witness] *whether* he was biased, counsel was unable to make a record from which to argue *why* [the witness] might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial." *Id.* at 318 (emphasis added). However, unlike the situation in *Davis*, defendant in the case at hand was able to pursue the issue of "why" his codefendant might have been biased against him by questioning him at length about the plea deal.

Finally, defendant argues that resentencing is required because several of the offense variables (OVs) were improperly scored. However, he fails to articulate what OVs were incorrectly scored, or why they were incorrectly scored. Because defendant failed to properly address the merits of his asserted error, we deem it abandoned. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Nonetheless, if defendant is challenging the scoring of OV 1, 2, 12, and 13, as he did in the trial court, on the ground that they should not be scored for his conspiracy conviction because they related to conduct that occurred after the conspiracy was concluded, the argument is without merit. In the trial court defendant asserted that the conspiracy ended once the agreement was made. We, like the trial court, disagree. Although the crime of conspiracy is complete at the time the unlawful agreement is made, the conspiracy "continues until the common enterprise has been fully completed, abandoned, or terminated." *People v Bushard*, 444 Mich 384, 394; 508 NW2d 745 (1993). Therefore, the trial court properly considered the conduct that occurred during the armed robbery for purposes of scoring the OVs for conspiracy to commit armed robbery.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello